

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In Re:**

**Wayne David Hansen and  
Tina Marie Hansen,**

**Debtors.**

**Chapter 7**

**BK 04-33298-DDO**

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**MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS**

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The memorandum submitted by the U.S. Trustee cites two justifications for granting the motion for dismissal of the Chapter 7 Bankruptcy Petition. First, the debtors failure to provide the information requested by the Office of the U.S. Trustee, and second, the Trustee has contended that there should be sufficient income to fund a chapter 13 bankruptcy plan.

As to the first justification for dismissal, the Trustee would ask the Court to dismiss for failure to provide the documentation requested if it was not received prior to the hearing on this matter to be held on October 7, 2004. As the documentation has now been provided to the U.S. Trustee, it would appear from the memorandum that the Trustee will no longer be asking the Court to dismiss the petition on this basis.

Secondly, with regard to the Trustee's contention that there is sufficient disposable income on the part of the debtors to fund a Chapter 13 plan.

In making a motion to dismiss a the debtors Chapter 7 Bankruptcy Petition, the Office of the United States Trustee bears the burden of proving that granting the relief requested will result in a "substantial abuse" of the bankruptcy process. 11 U.S.C. § 707(b). There is a presumption in favor of granting the relief requested by the debtor that the Trustee must overcome in order to have the motion to dismiss granted by the Court. Id.

In making this determination, the debtors' ability to fund a Chapter 13 plan "is the primary factor to be considered in determining whether granting relief would be substantial abuse." *In re Walton*, 866 F.2d 981, 984-85 (8th Cir. 1989). Consequently this determination will depend on the amount of disposable income the debtors have available to fund a Chapter 13 plan. The statute defines "disposable income" as income received by the debtor that is not reasonably necessary to support the debtor, the debtor's dependents, or the debtor's business. 11 U.S.C. § 1325(b)(2).

In this case, the U.S. Trustee claims the daycare expenses which were listed on the schedules is an unreasonable expenses and are not necessary for the support of the family. This is simply not the case. Ms. Hansen was employed by the Mayo Clinic in Rochester, Minnesota as a registered nurse until March of 2004, as the Statement of Financial Affairs indicates. At that time she was involuntarily terminated from her

employment with the Mayo Clinic. It was never the debtors intent that Ms. Hansen would remain unemployed and therefore the debtor's daughter was not removed from the daycare facilities that she had been going to during the time prior to Ms. Hansen's unemployment. If the debtors were to remove their daughter from the daycare facility during Ms. Hansen's period of unemployment, they would have been required to re-enroll her once Ms. Hansen was employed again. Due to the demand for daycare at this facility, the debtor's would have been placed on the waiting list again and could have been on this list for up to one year before they would have room again for their daughter to attend this daycare facility. Therefore, it was not unreasonable or unnecessary that they continued to pay daycare expenses during Ms. Hansen's period of unemployment.

Additionally, as the amended schedules which have been filed with the Court indicate, Ms. Hansen has found employment. Ms. Hansen has become employed as a realtor with Coldwell Banker / Burnet in Rochester, Minnesota. However, Ms. Hansen is compensated completely on commission, and therefore will not receive any income from her employment until she sells a home. Therefore, amount of the debtors income unchanged from their petition as originally filed. The debtors understand that it will likely be six to twelve months before Ms. Hansen sells her first home and brings income home from her employment with Coldwell Banker / Burnet.

Therefore, as it was not unreasonable or unnecessary for the debtors to continue to pay the child care expenses during Ms. Hansen's period of unemployment, and it is certainly not unreasonable nor unnecessary now that Ms. Hansen is re-employed, the U.S.

Trustee is unable to meet its burden of proof that granting the relief sought by the debtors would result in a substantial abuse of the bankruptcy process as there is no disposable income to fund a hypothetical Chapter 13 plan.

Dated: September 24, 2004

A handwritten signature in black ink, appearing to read "James M. Hansen", is written over a horizontal line.

James M. Hansen, Attorney at Law  
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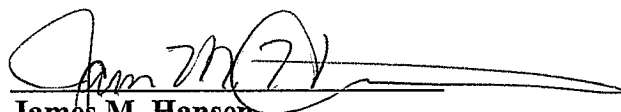
## AFFIDAVIT OF SERVICE

I, James M. Hansen, first being duly sworn, hereby state that I have served a copy of the foregoing Memorandum of Law in Opposition to Motion to Dismiss, by placing the same in an envelope, postage prepaid, to the addresses listed below, a depositing the same in the United States Mail in Rochester, Minnesota.

Michael Dietz  
Bankruptcy Trustee  
505 Marquette Building  
P.O. Box 549  
Rochester, MN 55903

Sara J. Wencil  
U.S. Trustees Office  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Dated: September 28, 2004

  
James M. Hansen

The foregoing instrument was subscribed  
To and acknowledged before me this  
28<sup>th</sup> day of September, 2004

  
Notary Public

